

# THE ANATOMY OF AN EQUIVALENT.

**T**HE World hath of late years never been without some extraordinary *Word* to furnish the Coffee-Houses and fill the Pamphlets. Sometimes it is a *new* one invented, and sometimes an *old* one revived. They are usually fitted to some present purpose, with intentions as differing as the various designs several parties may have, either to delude the People, or to expose their Adversaries: They are not of long continuance, but after they have passed a little while, and that they are grown nauseous by being so often repeated, they give place to something that is newer. Thus, after *Whig, Tory,* and *Trimmer* have had their time, now they are dead and forgotten, being supplanted by the word **Equivalent**, which reigneth in their stead.

The Birth of it is in short this: After many repeated *Essays* to dispose Men to the Repeal of Oaths and Tests, made for the security of the Protestant Religion, the general aversion to comply in it was found to be so great, that it was thought adviseable to try another manner of attempting it, and to see whether by putting the *same thing* into another Mould, and softening an *harsh Proposition* by a *plausible Term*, they might not have better success.

To this end, instead of an *absolute quitting* of these Laws, without any Condition; which was the *first* Proposal. Now it is put into gentler Language, and runneth thus; *If you will take away the Oaths and Tests, you shall have as good a thing for them.* This put into the fashionable Word, is now called an **Equivalent**.

So much to the Word it self. I will now endeavour in short to examine and explain, in order to the having it fully understood,

First, What is the nature of a true *Equivalent*; and

In the next place, What things are *not* to be admitted under that denomination.

I shall treat these as general Propositions; and though I cannot undertake how far they may be *convincing*, I may safely do it that they are *impartial*; of which there can be no greater evidence than that I make neither Inference nor Application, but leave that part intirely to the Reader, according as his own Thoughts shall direct and dispose him.

III. I will first take notice, that this Word, by the application which hath been made of it in some modern instances lieth under some *Disadvantage*, not to say some *Scandal*. It is transmitted hither from *France*; and if as in most other things that we take from them, we carry them beyond the Pattern, it should prove so in this, we should get into a more *partial* stile than the principles of English Justice will I hope ever allow us to be guilty of.

The French King's *Equivalents* in *Flanders* are very extraordinary *Bargains*; his manner of proposing and obtaining them is very differing from the usual methods of *equal* dealing. In a later instance, *Denmark*, by the encouragement as well as by the example of *France*, hath propos'd things to the Duke of *Holstein*, which are called *Equivalents*; but that they are so, the World is not yet sufficiently convinc'd, and probably the Parties concern'd do not think them to be so, and consequently do not appear to be at all dispos'd to accept them. Princes enjoyn and prescribe such things when they have *Strength* and *Power* to supply the want of *Arguments*; and according to practice in these Cases, the weaker are never thought to have an *ill Bargain*, if they have any thing left them. So that the first Qualification of an *Equivalent*, must be, that the Appraisers be *indifferent*, else it is only a *Sound*, there can be nothing *real* in it: For, where the same party that proposeth a Bargain, claimeth a Right to set the *Value*; or which is worse, hath *power* too to make it good; the other may be forced to submit to the Conditions, but he can by no means ever be persuaded to treat upon them.

IV. The next thing to be consider'd is, that to make an *Equivalent* in reality an equal thing in the Proposer, it must be a *better* thing than that which is required by him; just as good is subject to the hazard of not being quite so good; It is not easie to have such an even hand as to make the Value exactly equal; besides, according to the Maxim in Law, *Melior conditio possidentis*, the Offer is not fair, except the thing offered is better in value than the thing demanded. There must be allowance for removing what is fixed, and there must be something that may be a justification for *changing*. The value of things very often dependeth more upon other circumstances, than upon what is merely intrinsic to them; therefore the calculation must be made upon that foot, perhaps in most cases; and particularly the *want* which one of the parties may have of the thing he requireth, maketh it more valuable to him than it is in itself. If the party proposing doth not want the thing he would have in Exchange, his requiring it is *impertinent*: If he doth, his want of it must go into the appraisalment, and by consequence every Proposer of an *Equivalent* must offer a *better* thing, or else he must not take it unkindly to be refused, except the other party hath an *equal want* of the same thing, which is very improbable, since naturally he that wanteth most will speak first.

V. Another thing necessary to the making a fair Bargain is, that let the parties who treat, be they never so unequal in themselves, yet as to the particular thing propos'd, there must be an *exact equality*, as far as it relateth to the full Liberty of *taking* or *refusing*, *concurring* or *objecting*, without any consequence of *Revenge*, or so much as *Dissatisfaction*; for it is impossible to treat where it is an Affront to differ; that case there is no mean be-

between the two extreams, either an open Quarrel or an intire Submission; the way of Bargaining must be equal, else the Bargain it self cannot be so: For example, the Proposer is not only to use *equal* terms as to the matter, but *fair* ones in the manner too. There must be no intimations of Anger in case of refusal, much less any open *Threatning*. Such a Stile is so ill suited to the usual way of Treating, that it looketh more like a Breach of the Peace, than the making a Bargain. It would be yet more improper and less agreeing with the nature of an *Equivalent*, if whilst two Men are chaffering about the Price, one of them should actually take the thing in question at his own rate, and afterwards desire to have his possession confirmed by a formal Agreement; such a proceeding would not only destroy that particular contract, but make it impossible to have any other, with the party that could be guilty of such a practice.

VI. Violence preceding destroyeth all Contract, and even tho the party that offereth it should have a right to the thing he so taketh, yet it is to be obtained by legal means, else it may be forfeited by his irregularity in the pursuit of it: The Law is such an Enemy to Violence, and so little to be reconciled to it, that in the case of a Rape, the Punishment is not taken off though the party injured afterwards consenteth. The Justice of the Law hath its eye upon the first act, and the Maxim of *Volenti non fit injuria*, doth not in this case help the Offender, it being a plea subsequent to the Crime, which maketh it to be rejected as a thing wrong dated and out of time.

In taking away Goods or Money it is the same thing. The party robbed, by giving them afterwards to the taker, does not exempt him from the Punishment of the Violence: Quite contrary, the Man from whom they were taken is punishable, if he doth not prosecute. If the case should be, that a Man thus taking away a thing without price, claimeth a right to take it, then whether it is well or ill founded is not the Question; but sure, the party from whom it is so taken, whilst he is treating to Sell or Exchange it, can never make a Bargain with so arbitrary a Chapman, there being no room left after that to talk of the Value.

VII. To make an equal Bargain there must be a liberty of differing, not only in every thing that is really essential, but in every thing that is thought so by either party, and most especially by him who is in possession of the thing demanded: His Opinion must be a Rule to him, and even his Mistake in the Value, though it may not convince the Man he hath to deal with, yet he will be justified for not accepting what is offered, till that Mistake is fairly rectified and over-ruled.

When a Security is desired to be changed, that side which desireth it must not pretend to impose upon the other, so as to dictate to them, and tell them without debate, that they are safe in what is proposed, since of that the Counsel on the other side must certainly be the most competent Judges. The band it cometh from is a great Circumstance, either to invite or discourage in all matters of Contract; the Qualifications of the Party offering must sure with the Proposition it self, else let it be never so fair, there is ground for Suspicion.

VIII. When Men are of a temper, that they think they have *wrong* done them, if they have not always the *better* side of a *Bargain*: If they happen to be such as by experience have been found to have an *ill Memory* for their *Word*. If the Character they bear, doth not recommend their *Justice*, wherever their *Interest* is concern'd. In these cases, thinking Men will avoid dealing, not only to prevent *surprize*, but to cut off the occasions of *difficulty* or *dispute*.

It is yet *more discouraging*, when there are, either a *precedens* Practice, or *standing* Maxims of *gross Partiality*, in assuming a privilege of *exemption* from the usual methods of *equal dealing*.

To illustrate this by an Instance. Suppose that in any case, the Church of *Rome* should have an *Interest* to promote a *Bargain*; let her *way of dealing* be a little examin'd, which will direct those with whom she treateth, how far they are to rely upon what she *proposeth* to them. We may begin with the Quality in the World, the least consisting with equal dealing, *viz.* An incurable *Partiality* to herself; which, that it may arrive to its full perfection, is crowned with *Infallibility*. At the first setting out, she maketh herself incapable of dealing upon terms of *Equality*, by the Power she claimeth of *binding* and *loosing*, which hath been so often applyed to *Treaties*, as well as to *Sins*.

If the definition of *Justice* is to deal *equally*, she cannot be guilty of it without *betraying* her *Prerogative*, and according to her Principles, she giveth up the Superiority derived to her by *Apostolical Succession*, if she degradeth her self so as to be judged by the Rules of *common Right*, especially if the *Bargain* should be with *Hereticks*, who in her Opinion have *forfeited* the claim they might otherwise have had to it.

IX. Besides, her Taste hath been so spoiled by *unreasonable Bargains*, that she can never bring down her Palate to any thing that is *fair* or *equal*. She hath not only judg'd it an *Equivalent*, but a *great Bargain* for the other side, to give them *Absolutions* and *Indulgences* for the real Payment of great Sums, for which she hath drawn Bills to have them repayed with Interest in *Purgatory*.

This *Spiritual Bank* hath carried on such a Trade upon these *advantageous Terms*, that it can never submit to the small Profits an *ordinary Bargain* would produce.

The several Popes have in exchange for the *Peter-Pence*, and all their other *Rents* and *Fines* out of *England*, sent *sanctified Roses*, *Reliques*, and other such Wonder-working Trifles. And by virtue of their Character of *Holy Fathers*, have used Princes like *Children*, by sending them such *Rattles* to play with, which they made them buy at extravagant Rates; besides which, they were to be *thankful* too, into the bargain.

A Chip of the Cross, a piece of *S. Laurence's Gridiron*, a Hair of *S. Peter*, have been thought *Equivalents* for much more *substantial* things. The Popes being Masters of the Jewel-House, have set the *Rates* upon them, and they have passed; though the whole Shop would not take up the value of a Bodkin in *Lombardstreet* upon the credit of them.

They are *unconscionable Purchasers*, for they get all the Money from the *living* by praying for them when they are *dead*. And it is observable, that the Northern part of *Christendom*, which best understandeth *Trade*, were the first that



that *refused* to make any more Bargains with them; so that it looketh as if the chief quarrel to the *Hereticks* was not as they were *ill Christians*, but as they were *unkind Merchants*, in so discourteously rejecting the Commodities of the growth of *Rome*.

To conclude this Head, There is no bartering with *Infallibility*, it being so much *above Equality*, that it cannot bear the Indignity of a *true Equivalent*.

X. In all Bargains there is a necessity of looking back, and reflecting how far a *present proposal* is reconcileable with a *former practice*; For Example, if at any time a thing is offered, quite differing from the *Arguments* used by the Proposer, and *inconsistent* with the *Maxims* held out by him at other times. Or in a Publick case, if the *same* men who promote and press a thing with the *utmost violence*, do in a little time after with *as much violence* press the *contrary*, and profess a *detestation* of the *very thing*, for which they had before employed *all* their *Interest* and *Authority*. Or if in the case of a *Law* already made, there should be a priviledge claimed to *exempt* those from the obligation of observing it, who yet should *afterwards* desire and press to have a *new Law* made in exchange for the *old* one, by which they would not be bound; and that they should propose a *security* by a thing of the *very same nature* as that which they did *not* allow to be any *before*. These *Incoherences* must naturally have the effect of raising *suspicion*, or rather they are a *certain proof*, that in such circumstances it is *irrational* for men to expect an *effectual Equivalent*.

XI. If whatsoever is more than *ordinary* is *suspicious*, every thing that is *unnatural* is more so: It is not only *unnecessary* but *unnatural* too to persuade with *violence* what it is *folly* to *refuse*; to push men with eagerness into a good bargain for *themselves*, is a stile very much unsuitable to the *nature* of the thing. But it goeth further and is yet more absurd, to grow *angry* with men for *not* receiving a proposal that is for their *advantage*; Men ought to be content with the *Generosity* of *offering* good bargains, and should give their *compassion* to those who do *not understand* them: but by carrying their good nature so far as to be *Cholerick* in such a case, they would follow the example of the *Church of Rome*, where the definition of *Charity* is very extraordinary. In her Language, the *Writ de Heretico Comburendo* is a *Love-letter*, and burning men for differing with them in Opinion, howsoever miscalled *Cruelty*, is as they understand it, the *perfection* of *flaming Charity*.

When *Anger* in these cases lasteth long, it is most probable that it is for our *own sakes*; Good nature for *others* is one of those *Diseases* that is *cured by time*, and especially where it is *offered* and *rejected*; but for *our selves* it *never faileth*, and cannot be extinguished but with our life. It is fair if men can believe that their friends love them *next* to themselves, to love them *better* is too much; the Expression is so *unnatural* that it is *cloying*, and men must have no *sense*, who in this case have no *suspicion*.

XII. Another Circumstance necessary to a *fair bargain* is, That there must be *openness* and *freedom* allowed, as the effect of that *equality* which is the foundation of Contracting. There must be full liberty of *objecting*, and making *doubts* and *scruples*: If they are such as can be *answered*, the party convinced is so much the more *confirmed* and *encouraged* to deal, instead of being hindered

by them; but if instead of an *answer* to satisfy, there is nothing but *anger* for a reply, it is impossible not to conclude that there is never a good one to give; so that the objection *remaining* without being fully *confuted*, there is an absolute *bar* put to any further Treaty.

There can be no dealing where one side assumeth a priviledg to *impose*, so as to make an *offer* and not bear the *examination* of it, this is giving *judgment* not making a *bargain*. Where it is called *unmanly* to *object*, or *criminal* to *refuse*, the surest way is for men to stay where they are, rather than treat upon such disadvantage.

If it should happen to be in any Country where the governing power should allow men *Liberty of Conscience* in the choice of their *Religion*, it would be strange to deny them *liberty of speech* in making a *bargain*. Such a contradiction would be so discouraging, that they must be *unreasonably sanguine*, who in that case can entertain the hopes of a *fair Equivalent*.

XIII. An *equal Bargain* must not be a *Mystery* nor a *Secret*, The purchaser or proposer is to tell *directly* and *plainly*, what it is he intendeth to give in Exchange for that which he requireth. It must be *viewed* and *considered* by the other party, that he may judge of the value; for without *knowing* what it is, he cannot determine whether he shall *take* or *leave* it. An assertion in *general*, that it shall be *as good* or a *better* thing, is not in this a *sufficient* excuse for the mistake of dealing upon such *uncertain* terms. In all things that are dark and not enough explained, *suspicion* naturally followeth: A *secret* generally implieth a *defect* or a *deceit*; and if a *false light* is an objection, *no light* at all is yet a greater. To pretend to give a *better* thing, and to refuse to *show* it, is very near saying, it is *not so good* a one; at least so it will be taken in common construction. A *Mystery* is yet a more discouraging thing to a *Protestant*; especially if the Proposition should come from a *Papist*; it being one of his great Objections to that Church, that there are so many of them *Invisible* and *Impossible*, which are so violently thrust upon their understandings, that they are overlaid with them. They think that *rational creatures* are to be convinced only by *reason*, and that *reason* must be *visible* and *freely exposed*; else they will think themselves used with *contempt* instead of *equality*, and will never allow such a *suspected secrecy* to be a fit preface to a *real Equivalent*.

XIV. In matters of Contract not only the *present* value, but the *contingencies* and *consequences*, as far as they can be fairly supposed, are to be considered. For Example, if there should be a *possibility*, that one of the parties may be ruined by *accepting*, and the other only *disappointed* by his *refusing*; the consequences are so extremely *unequal*, that it is not imaginable, a man should take that for an *Equivalent*, which hath such a *fatal possibility* at the heels of it.

If it should happen in a *publick* case, that such a proposal should come from the *minor* part of an Assembly or Nation, to the *greater*; It is very just, that the *bazand* of such a *possibility* should more or less likely fall upon the *lesser* part, rather than upon the *greater*; for *whose* sake and *advantage* things are and must be calculated in all *publick Constitutions*. Suppose in any mixed Government, the *chief Magistrate* should propose upon a condition, in the *Senate*, *Diet*, or other

other *Supreme Assembly*, either to Enact or Abrogate one or more Laws, by which a *possibility* might be let in of *destroying* their Religion and Property, which in other language signifieth no less than *Soul and Body*; where could be the *Equivalent* in the case, not only for the *real loss*, but even for the *fear of losing* them? Men can fall no lower than to *lose all*, and if *losing all* destroyeth them, the *venturing all* must fright them.

In an instance when Men are secure, that how far soever they may be over-run by *Violence*, yet they can never be undone by *Law*, except they give their assistance to make it possible; though it should neither be likely nor intended, still the *consequence* which may happen is too big for any present thing to make amends for it. Whilst the word *Possible* remaineth, it must forbid the bargain. Wherever it falleth out therefore, that in an Example of a publick nature, the Changing, Enacting, or Repealing a Law, may naturally tend to the *misplacing* the Legislative power in the hands of those who have a *separate interest* from the body of a People, there can be no treating, till it is demonstrably made out, that *such* a consequence shall be *absolutely impossible*; for if, that shall be *denied* by those who make the proposal, if it is because they cannot do it, the motion at first was very *unfair*. If they can and will not, it would be yet less reasonable to expect that such *partial* dealers would ever give an *Equivalent* fit to be accepted.

XV. It is necessary in all dealing to be *assured* in the first place, that the party proposing is in a condition to make good his Offer; that he is neither under any former Obligations or pretended Claims, which may render him incapable of performing it; else he is so far in the condition of a *Minor*, that whatever he disposeth by sale or exchange may be afterwards resumed, and the Contract cometh void, being originally defective, for want of a sufficient legal power in him that made it.

In the case of a strict Settlement, where the party is only *Tenant for life*, there is no possibility of treating with one under such fetters; no purchase or exchange of Lands or any thing else can be good, where there is such an *incapacity* of making out a Title; the interest vested in him being so *limited*, that he can do little more than pronounce the *words* of a Contract, he can by no means perform the effect of it.

In more publick instances, the *impossibility* is yet more express; as suppose in any Kingdom, where the people have so much liberty left them, as that they may make Contracts with the *Crown*, there should be some *peculiar rights* claimed to be so fixed to the Royal Function, that no King for the time being could have power to part with them, being so *fundamentally* tied to the Office, that they can never be separated. Such *Rights* can upon no occasion be received in exchange for any thing the *Crown* may desire from the People: That can never be taken in payment, which cannot lawfully be given, so that if they should part with that which is required upon those terms, it must be a *gift*, it cannot be a bargain.

There is not in the whole *Dictionary* a more untractable word than *Inherent*, and less to be reconciled to the word *Equivalent*.

The party that will Contract in sight of such a Claim, is content to take what is impossible to grant, and if he complaineth of his Disappointment, he neither can have Remedy, nor deserve it.

If a Right so claimed hapneth to be of so comprehensive a nature, as that by a clear inference it may extend to every thing else, as well as to the particular matter in question, as often as the Supream Magistrate shall be so disposed, there can in that case be no treating with a Prerogative that swalloweth all the Right the People can pretend to; and if they have no right to any thing of which they are possessed, it is a Jest and not a Bargain, to observe any Formality in parting with it.

A Claim may be so stated, that by the power and advantage of interpreting, it shall have such a murthering eye, that if it looketh upon a Law, like a Basilisk, it shall strike it dead: Where is the possibility of Treating, where such a Right is assumed? Nay, let it be supposed, that such a Claim is not well founded in Law, and that upon a free disquisition it could not be made out; yet even in this case, none that are well advised will conclude a Bargain, till it is fully stated and cleared, or indeed, so much as engage in a treaty, till by way of preliminary all possibility shall be remov'd of any trouble or dispute.

XVI. There is a collateral circumstance in making a Contract, which yet deserveth to be considered, as much as any thing that belongeth to it; and that is the character and figure of the parties contracting; if they treat only by themselves, and if by others, the Qualifications of the instruments they employ.

The Proposer especially, must not be so low as to want credit, nor so raised as to carry him above the reach of ordinary dealing. In the first, There is scandal; in the other danger. There is no Rule without some Exception, but generally speaking the means should be suited to the end, and since all Men who treat, pretend an equal bargain, it is desirable that there may be equality in the persons as well as in the thing.

The manner of doing things hath such an influence upon the matter, that Men may guess at the end by the instruments that are used to obtain it, who are a very good direction how far to rely upon or suspect the sincerity of that which is proposed. An Absurdity in the way of carrying on a Treaty, in any one Circumstance, if it is very gross, is enough to perswade a thinking Man to break off, and take warning from such an ill appearance. Some things are so glaring that it is impossible not to see, and consequently not to suspect them; as suppose in a private case, there should be a Treaty of Marriage between two Honourable Families, and the proposing side should think fit to send a Woman that had been Carted, to perswade the young Lady to an approbation and consent; the unfitness of the Messenger must naturally dispose the other party to distrust the Message, and to resist the temptation of the best Match that could be offered, when conveyed by that hand, and uttered in by such a discouraging preliminary.

In a publick instance the suspicion arising from unfit Mediators, still groweth more reasonable in proportion, as the consequence is much greater of being deceived. If a few should be employed to sollicite all sorts of Christians to unite and agree; the contrariety of his profession, would not allow Men to stay till they heard



heard his Arguments, they would conclude from his Religion, that either the Man *himself* was mad, or that he thought *those* to be so, whom he had the Impudence to endeavour to persuade.

Or suppose an *Adamite* should be very solicitous and active, in all places, and with all sorts of Persons, to settle the *Church of England* in particular, and a fair *Liberty of Conscience* for all Dissenters; though nothing in the World has more to be said for it than *Naked Truth*, yet if such a Man should run up and down without Cloaths, let his Arguments be never so good, or his Commission never so Authentick, his *Figure* would be such a contradiction to his business, that how serious soever that might be in itself, his *interposition* would make a Jest of it.

Though it should not go so far as this, yet if Men have *contraxieties* in their way of living not to be reconciled; as if they should pretend infinite zeal for liberty, and at that time be in great favour and employed by those who will not endure it.

If they are affectedly singular, and conform to the generality of the World in no one thing, but in playing the knave.

If demonstration is a familiar word with them, most especially where the thing is impossible.

If they quote *Authority* to supply their want of sense, and justify the value of their Arguments, not by reason, but by their being paid for them, (in which, by the way, those who pay them have probably a very melancholy Equivalent.) If they brandish a Prince's Word like a Sword in a Crowd, to make way for their own impertinence; and in dispute, as Criminals formerly fled to the Statue of the Prince for Sanctuary; if they should now, when baffled, creep under the protection of a Kings Name, where out of respect they are no farther to be pursued.

In these cases, Though the propositions should be really good, they will be corrupted by passing through such Conduits, and it would be a sufficient Mistake to enter into a Treaty; but it would be little less than Madness from such hands to expect an Equivalent.

XVII. Having touched upon these particulars as necessary in order to the stating the nature of an equal Bargain, and the Circumstances belonging to it, let it now be examined in two or three instances, what things are not to be admitted by way of Contract, to pass under the Name of an Equivalent.

First, Though it will be allowed, that in the general corruption of mankind, which will not admit Justice alone to be a sufficient tie to make good a Contract, that a Punishment added for the breach of it, is a fitting or rather a necessary Circumstance; yet it does not follow, that in all cases, a great Penalty upon the party offending is an absolute and an entire Security. It must be considered in every particular case, how far the Circumstances may rationally lead a Man to rely more or less upon it.

In a private instance, the Penalty inflicted upon the breach of Contract must be first, such a one as the party injured can enforce, and Secondly, such a one as he will enforce, when it is in his power.

If the *Offending party* is in a capacity of *binding* the other from bringing the Vengeance of the Law upon him. If he hath *strength* or *privilege* sufficient to *over-rule* the Letter of the Contract; in that case, a *Penalty* is but a *Word*; there is no consequence belonging to it. Secondly, The *forfeiture* or *punishment* must be such as the Man aggrieved will *take*; for Example, if upon a *Bargain*, one of the Parties shall stipulate to subject himself, in case of his *failure* to have his *Ears cut*, or his *Nose slit* by the other, with *security* given, that he shall not be prosecuted for executing this part of the Agreement; the *Penalty* is no doubt *heavy enough* to discourage a Man from breaking his Contract; but on the other side it is of *such a kind*, that the other how much soever he may be provoked, will not in cold blood care to inflict it. Such an extravagant Clause would seem to be made only for *show* and *sound*, and no Man would think himself safer by a thing which one way or other is sure to prove *ineffectual*.

In a *publick* Case, Suppose in a Government so constituted that a *Law* may be made in the nature of a *Bargain*, it is in it self no more than a *dead letter*, the *life* is given to it by the *execution* of what it containeth; so that let it in it self be never so perfect, it *dependeth* upon those who are intrusted with seeing it observed.

If it is in any Country, where the *chief Magistrate* chuseth the *Judges*, and the *Judges* interpret the *Laws*; a *Penalty* in any one particular Law can have no effect but what is *precarious*. It may have a *loud voice* to threaten, but it has not an *hand* to give a blow; for as long as the Governing power is in possession of this Prerogative, let who will chuse the *Meat*, if they chuse the *Cooks*, it is they that will give the *tast* to it. So that it is clear that the *rigour* of a *Penalty* will not in all cases fix a *Bargain*, neither is it Universally a true Position, that the increase of *punishment* for the breach of a *new Law*, is an *Equivalent* for the consent to part with an *old* one.

XVIII. In most *Bargains* there is a reference to the *time to come*, which is therefore to be considered as well as that which cometh within the compass of the *present* valuation.

Where the *party Contracting*, hath not a *full power* to dispose what belongeth to him or them in *Reversion*, who shall succeed after him in his Right; he cannot make any part of what is so limited to be the *condition* of the Contract. Further, he cannot enjoin the *Heir* or *Successor* to forbear the exercise of any Right that is *inherent* to him, as he is a Man: neither can he *restrain* him without his own consent, from doing any act which in it self is *lawful*, and liable to no *objection*. For Example, A *Father* cannot stipulate with any other Man, that in Consideration of such a thing done, or to be done, his *Son* shall never *Marry*; because Marriage is an Institution *Established* by the Laws of God and Man, and therefore no body can be so restrained by any power from doing *such* an act, when he thinketh fit, being *warranted* by an Authority that is not to be controuled.

XIX. Now as there are *Rights inherent* in Mens persons in their *single capacities*, there are *Rights* as much fixed to the *Body Politick*, which is a Creature that never dieth. For instance, There can be no Government without a *Supreme Power*,

*Power*, that *Power* is not always in the *same* hands, it is in *different* shapes and dresses, but still wherever it is lodged, it must be *unlimited*: It hath a jurisdiction over every thing *else*, but it cannot have it above *it self*. *Supreme Power* can no more be *limited* than *Infinity* can be *measured*; because it ceaseth to be the thing; its very being is dissolved, when any bounds can be put to it.

Where this *Supreme Power* is *mixed*, or *divided*, the *shape* only *differeth*, the *Argument* is still the *same*.

The present State of *Venice* cannot restrain those who succeed them in the same power, from having an entire and unlimited *Sovereignty*; they may indeed make *present Laws* which shall retrench their *present Power*, if they are so disposed, and those *Laws* if not *repealed* by the *same authority* that enacted them, are to be *observed* by the succeeding Senate till they think fit to *Abrogate* them, and no longer; for if the *Supreme Power* shall still reside in the Senate, perhaps composed of *other Men*, or of *other minds* (which will be sufficient) the necessary consequence is, that *one* Senate must have as much right to *alter* such a *Law*, as *another* could have to *make* it.

XX. Suppose the *Supreme Power* in any State should make a *Law*, to enjoyn all subsequent *Law-makers* to take an *Oath* never to *alter* it, it would produce these following *Aburdities*.

First, All *Supreme Power* being instituted to promote the *safety* and *benefit*, and to prevent the *prejudice* and *danger* which may fall upon those who live under the *protection* of it; the *consequence* of such an *Oath* would be, that all *Men* who are so trusted, shall take *God* to witness, that such a *Law* once made, being judged at the time to be *advantageous* for the publick, though afterwards by the vicissitude of times, or the variety of accidents or interests, it should plainly appear to them to be *destructive*, they will suffer it to have its course, and will never repeal it.

Secondly, If there could in any Nation be found a *set of Men*, who having a *part* in the *Supreme legislative Power*, should as much as in them lieth, betray their Country by such a criminal engagement, so *directly opposite* to the nature of their *Power*, and to the *Trust* reposed in them. If these *Men* have their power only for *life*, when they are dead such an *Oath* can operate no farther; and tho that would be too long a *Lease* for the life of such a *Monster* as an *Oath* so composed, yet it must then certainly give up the Ghost. It could bind none but the first makers of it, *another* generation would never be tied up by it.

Thirdly, In those Countries where the *Supreme Assemblies* are not constant standing Courts, but called together upon *occasions*, and composed of such as the People chuse for that time only, with a *Trust* and *Character* that remaineth no longer with them than till that Assembly is regularly dissolved; such an *Oath* taken by the Members of a Senate, Diet, or other Assembly so chosen, can have very little effect, because at the next meeting there may be quite another *set of Men* who will be under no *Obligation* of that kind. The eternity intended to that *Law* by those that made it, will be cut off by new *Men* who shall succeed them in their power, if they have a *differing Taste*, or another *Interest*.

XXI. To put it yet farther, Suppose a *Clause* in such a *Law*, that it shall be *criminal* in the last degree for any *Man* chosen in a subsequent Assembly, to

propose the repealing it; and since nothing can be *Enacted* which is not first *proposed*, by this means it seemeth as if a Law might be Created which should *never die*. But let this be Examined.

First, such a clause would be so *destructive* to the *being* of such a Constitution, as that it would be as reasonable to say, that a King had right to *give* or *sell* his Kingdom to a *foreign Prince*, as that any number of Men who are *entrusted* with the Supreme Power, or any part of it, should have a right to *impose* such Shackles upon the Liberty of those who are to *succeed* them in the *same Trust*. The ground of that *Trust* is, that every Man who is chosen into such an Assembly, is to do all that in him lieth for the *good* of those who *chose* him: The English of such a Clause would be, that he is *not* to do his *best* for those that *chose* him, because though he should be *convinced* that it might be very *fatal* to *continue* that *Law*, and therefore very *necessary* to *repeal* it, yet he must not repeal it, because it is made a *Crime*, and attended with a *Penalty*.

But secondly, to shew the *emptiness* as well as *injustice* of such a Clause, it is clear, that although such an Invasion of Right should be imposed, it will never be obeyed: There will only be *Deformity* in the *Monster*, it will neither *sting* nor *bite*. Such *Lawgivers* would only have the honour of attempting a *contradiction* which can never have any success; for as such a *Law* in it self would be a *Madness*, so the *Penalty* would be a *Jest*; which may be thus made out.

XXII. A Law that carrieth in it self *Reason* enough to *support* it, is so far from wanting the *protection* of such a Clause, or from *needing* to take such an *extraordinary* receipt for long Life, that the *admitting* it must certainly be the *likeliest* and the *shortest* way to *destroy* it; such a Clause in a Law must imply an opinion that the *greatest* part of mankind is *against* it, since it is impossible such an exorbitance should be done for its *own sake*; the end of it must be to *force* Men by a *Penalty*, to that which they could *not* be *persuaded* to, whilst their Reason is left at *liberty*. This Position being granted, which I think can hardly be denied, put the case that a Law should be made with this *imaginary* Clause of *Immortality*, after which another *Assembly* is chosen, and if the majority of the *Electors* shall be *against* this Law, the greater part of the *Elected* must be so too, if the choice is fair and regular; which must be presumed, since the supposition of the contrary is not to come within this Argument. When these Men shall meet, the *Majority* will be visible beforehand of those who are *against* such a Law, so that there will be no *hazard* to any single Man in proposing the *Repeal* of it, when he cannot be *punished* but by the *Majority*, and he hath such a kind of assurance as cometh near a Demonstration, that the *greater Number* will be of his mind, and consequently, that for their own sakes they will *secure* him from any danger.

For these Reasons, wherever in order to the making a Bargain, a Proposition is advanced to make a *new Law*, which is to tie up those who neither can nor will be bound by it, it may be a good *Jest*; but it will never be a good *Equivalent*.

XXIII. In the last place, let it be examined how far a *Promise* ought to be taken for a *Security* in a Bargain.

There



There is great Variety of Methods for the *Security* of those that deal, according to their *Dispositions* and *Interests*; some are *binding*, others *inducing* circumstances, and are to be so distinguished.

First, *Ready Payment* is without exception, so of that there can be no dispute; in default of that, the *good Opinion Men* may have of one another is a great ingredient to supply the want of *immediate* Performances. Where the Trust is grounded upon *Inclination* only, the Generosity is not always *return'd*; but where it springeth from a *long Experience* it is a better foundation, and yet that is not always *secure*. In ordinary dealing, one *Promise* may be an *Equivalent* to another, but it is not so for a thing *actually* granted or conveyed; especially if the thing required in exchange for it, is of great *value*, either in *it self* or in its *consequences*. A bare Promise as a *single Security* in such a case is not an *equal* proposal; if it is offered by way of *addition*, it generally giveth cause to doubt the Title is crazy, where so *slender* a thing is brought in to be a *supplement*.

XXIV. The *Earnest* of making good a Promise, must be such a behaviour *preceding* as may encourage the party to whom it is made to depend upon it: Where instead of that, there hath been *want of Kindness*, and which is worse, an *Invasion of Right*, a Promise hath no perswading force; and till the *Objection* to such a Proceeding is *forgotten*, (which can only be the work of time) and the Skin is a little grown over the tender part, the Wound must not be touch'd. There must be some *Intermission* at least to abate the smart of *unkind usage*, or else a Promise in the Eye of the party injur'd is so far from *strengthening* a Security, that it raiseth more *doubts*, and giveth more justifiable cause to *suspect* it.

A *Word* is not like a *Bone*, that being broken and well set again, is said to be sometimes stronger in that very part: It is far from being so in a *Word* given and not made good. Every single Act either *weakeneth* or *improvet* our Credit with other Men; and as an habit of being *just* to our Word will *confirm*, so an habit of too freely *dispensing* with it must necessarily *destroy* it. A *Promise* hath its effect to perswade a Man to lay some weight upon it, where the *Promiser* hath not only the *power*, but may reasonably be supposed to have the *will* of performing it; and further, that there be no *visible interest* of the party promising to excuse himself from it, or to evade it.

All Obligations are *comparative*, and where they seem to be opposite, or between the greater and the lesser, which of them ought to have precedence in all respects every man is apt to be his own *Judge*.

XXV. If it should fall out that the *Promiser* with full intent at the time to perform, might by the interposition of new *Arguments*, or *differing Advice* think himself oblig'd to turn the matter of Conscience on the other side, and should look upon it to be much a greater fault to keep his word than to break it; such a Belief will *untie* the *strictest Promise* that can be made, and though the Party thus absolving himself should do it *without* the mixture or temptation of *private interest*, being moved to it merely by his Conscience, as then informed; yet how far soever that might diminish the *Fault* in him, it would in no degree lessen the *inconveniences* to the party who is *disappointed*, by the breach of an engagement upon which he rely'd.

XXVI. A

XXVI. A *Promise* is to be understood in the *plain* and *natural* sense of the words, and to be sure not in his who *made* it, if it was given as part of a Bargain. That would be like giving a Man power to *raise* the *value* of his Money in the payment of his *Debt*, by which, tho he paid but half or less, he might pretend according to the letter to have made good the Contract.

The *power* of *interpreting* a *Promise* intirely taketh away the *virtue* of it. A Merchant who should once assume that privilege, would save himself the trouble of making any more Bargains.

It is still worse if this *Jurisdiction* over a Man's *Promise*, should be lodg'd in hands that have Power to support such an *extraordinary Claim*; and if in other Cases, forbearing to deal upon those terms is *advisable*, in this it becometh absolutely *necessary*.

XXVII. There must in all respects be a full liberty to *claim* a *Promise*, to make it reasonable to *take* it in any part of payment; else it would be like agreeing for a *Rent*, and at the same time making it *criminal* to *demand* it.

A *superiority* of *Dignity* or *Power* in the party promising maketh it a more *tender* thing for the other party to treat upon that security. The first maketh it a *nice* thing to *claim*, the latter maketh it a *difficult* thing to *obtain*.

In some cases, a *Promise* is in the nature of a *Covenant*, and then between *equal* parties the breach of it will bear a *Suit*; but where the *greatness* of the Promiser is very much raised above the level of *equality*, there is no Forfeiture to be taken. It is so far from the party grieved his being able to *sue* or *recover Damages*, that he will not be allowed to *explain* or *expostulate*, and instead of his being *relieved* against the breach of *Promise*, he will run the hazard of being *punished* for breach of Good Manners. Such a Difficulty is putting all or part of the Payment in the Fire, where Men must burn their Fingers before they can come at it.

That cannot properly be called *good payment*, which the party to whom it is due may not receive with *ease* and *safety*. It was a Kings Brother of *England* who refused to lend the Pope money, for this reason, *That he would never take the Bond of one, upon whom he could not distrain*.

The Argument is still *stronger* against the Validity of a *Promise*, when the Contract is made between a *Prince* and a *Subject*. The very offering a Kings Word in Mortgage is rather a *threatning* in case of refusal, than an *inducing* Argument to accept it; it is *unfair* at first, and by that giveth greater cause to be cautious, especially if a thing of that *value* and *dignity* as a Kings Word ought to be, should be put into the hands of *State-Brokers* to strike up a Bargain with it.

XXVIII. When God Almighty maketh Covenants with Mankind, His *Promise* is a *sufficient Security*, notwithstanding his *Superiority* and his *Power*; because first, he can neither *err* nor do *injustice*. It is the *only* Exception to his Omnipotence, that by the Perfection of his *being* he is incapacitated to do *wrong*. Secondly, at the *instant* of His *Promise*, by the extent of his Foresight, which cannot fail, there is no room left for the possibility of any thing to *intervene*, which might *change* his mind. Lastly, he is above the receiving either *Benefit* or *Inconvenience*, and therefore can have no *Interest* or *Temptation* to vary from his Word, when once he hath granted it. Now

Now though Princes are God's Viceregents, yet their Commission not being so large, as that *these Qualifications* are devolved to them, it is quite another case, and since the offering a Security implyeth it to be examined by the party to whom it is proposed, it must not be taken ill that Objections are made to it, even though the Prince himself should be the *immediate Proposer*.

Let a familiar Case be put; Suppose a Prince, tempted by a Passion too strong for him to resist, should descend so as to promise Marriage to one of his Subjects, and as Men are naturally in great haste upon such occasions, should press to take possession before the *necessary Forms* could be complied with; would the poor Ladies *Scruples* be called *criminal* for not taking the Security of the Royal Word? Or would her *Allegiance* be tainted by her *resisting* the sacred Person of her Sovereign, because he was impatient of delay? *Courtesie* in this case might persuade her to accept it, if she was so disposed, but sure the *just exercise* of Power can never *claim* it.

XXIX. There is one Case where it is more particularly a *Duty* to use very great caution in accepting the security of a Promise, and that is, when Men are *authorized* and *trusted* by others to act for them. This putteth them under much greater restraints, than those who are at liberty to treat for themselves. It is lawful, though it is not prudent for any man to make an *ill Bargain* for himself, but it is neither the one nor the other, where the party contracting treateth on behalf of another, by whom he is *intrusted*. Men who will unwarily accept an *ill security*, if it is for themselves, forfeit their own discretion, and undergo the Penalty, but they are not responsible to any body else. They lie under the Mortification and the loss of committing the error, by which though they may expose their *Judgment* to some *censure*, yet their *Morality* suffers no reproach by it.

But those who are *deputed* by others to treat for them, upon terms of *best advantage*, though the *Confidence* placed in them should prevent the putting any limits to their Power in their Commission, yet the *Condition* implied if not expressed, is that the Persons so Trusted shall neither make an *ill Bargain*, nor accept a *slight Security*.

The Obligation is yet more binding when the Trust is of a *Publick Nature*. The aggravation of disappointing a *Body* of Men that rely upon them, carrieth the Fault as high as it can go, and perhaps no Crime of any kind can outdo such a *deliberate breach of Trust*, or would more justly make Men forfeit the protection of *humane Society*.

XXX. I will add one thing more upon this Head, which is, that it is not always a true Proposition, that 'tis safe to rely upon a Promise, if at the time of making it, it is the *Interest* of the Promiser to make it good. This, though many times it is a good *Inducement*, yet it hath these Exceptions to it. First, if the Proposer hath at other times gone plainly against his *visible Interest*, the Argument will turn the other way, and his former *Mistakes* are so many *Warnings* to others, not to come within the danger of any more: let the *Inducements* to those Mistakes be never so great and *generous*, that does not alter the Nature, they are *Mistakes* still.

*Interest* is an *uncertain* thing, It goeth and cometh, and varieth according to times and circumstances; as good build upon a *Quicksand*; as upon a presumption that *Interest* shall not *alter*. Where are the Men so distinguished from the rest of Mankind, that it is impossible for them to *mistake their Interest*? Who are they that have such an exemption from humane Frailty, as that it can never happen to them not to *see their Interest* for want of Understanding, or not to *leap over it* by excess of Zeal.

Above all, *Princes* are the *most* liable to Mistake; not out of any *defect* in their Nature, which might put them under such an unfortunate distinction; quite contrary, the blood they derive from wise and great Ancestors, does rather distinguish them on the better side; besides that their great Character and Office of Governing giveth a noble Exercise to their Reason, which can very hardly fail to raise and improve it. But there is one Circumstance annexed to their Glorious Calling, which in this respect is sufficient to outweigh all those Advantages; it is that *Mankind*, divided in most things else, agree in this, to *conspire* in their endeavors to *deceive* and *mislead* them; which maketh it above the power of humane understanding, to be so exactly guarded as never to admit a surprise, and the highest applause that could ever yet be given to the greatest Men that ever wore a Crown, is that they *were no finer deceived*.

Thus I have ventur'd to lay down my thoughts of the Nature of a *Bargain*, and the *due Circumstances* belonging to an *Equivalent*, and will now conclude with this short word. "Where *Distrusting* may be the cause of provoking *Anger*, and *Trusting* may be the cause of bringing *ruin*, the Choice is too *easy to need the being Explained*."

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F I N I S .

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